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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/876,410 | 06/07/2001 | Lynne Travis-Pence | 1535-001 | 7310 |

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EXAMINER

PICKETT, JOHN G

ART UNIT PAPER NUMBER

3728

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/876,410

Applicant(s)

TRAVIS-PENCE, LYNNE

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 5 and 18-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action acknowledges the applicant's Amendment submitted 24 November 2003 along with the affidavit of mailing on 14 July 2004. The amendment is considered timely and an action on the merits of the case follows. Claims 1-20 are pending in the application. Claims 5 and 18-20 are withdrawn from further consideration as being directed to a non-elected invention.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rectangular exterior with the cylindrical interior of claim 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Currently, Figures 1B and 3B only show the lid.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

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and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. The objection to claim 15 is hereby withdrawn.

Claim Rejections - 35 USC § 112

5. Claims 11-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is dependent upon itself. To prosecute the examination of the claim, the examiner interprets the claim to depend from claim 8.

Claims 12 and 13 are dependent on claim 11 and are rejected for the above reasons.

Claim Rejections - 35 USC § 102

6. Claims 1, 2, 4, 6-9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown (US 197,595).

Regarding claim 1, Brown discloses a container (Figure 1) that is capable of storing at least one candle and comprises a hollow base (A, B) having a bottom (A) and a side portion (B); a lid (C) having a top surface and a bottom surface (as shown, Figure 4), each dimensioned to rest upon the side portion (B); and the bottom surface of lid (C) having a compartment (c). The dimensions of Brown are such that they are capable of holding candles as claimed by the applicant.

As to claim 2, the candle is not positively claimed. As such, depending on the diameter of the tea light candle, Brown is capable of retaining tea light candles as claimed.

As to claim 4, the candle is not positively claimed. As such, depending on the size of the candle, Brown is capable of storing candles as claimed.

As to claim 6, Brown discloses wall-mounting plate (d, Figure 2).

As to claim 7, Brown discloses an outer surface of side portion (B) having a decorative design.

As to claim 8, Brown discloses a bottom surface with an alignment detail (e).

As to claim 9, Brown discloses a lip (e'') and extended portion (e).

As to claim 11, inasmuch as the examiner can determine the scope of claim, Brown discloses a top surface with an alignment detail (e').

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As to claim 12, inasmuch as the examiner can determine the scope of claim, Brown discloses a lip (e").

7. Claims 1, 3, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Steffes (US 4,889,257).

Regarding claim 1, Steffes discloses a container (15) with a hollow base (16) arranged and dimensioned as claimed, and a lid (17) having a top surface (19) and a bottom surface (20) with compartments (21) capable of receiving candles having an insulated base. Lid (17) is dimensioned as claimed and has a storage position (Figure 1) and a display position (Figure 4).

As to claim 3, lid (17) has two compartments (21).

As to claim 14, Steffes discloses a rectangular shape.

Claim Rejections - 35 USC § 103

8. Claims 10 and 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown.

Brown discloses the claimed inventions except for the chamfered portion in combination with a countersunk alignment detail. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Brown with a chamfered portion and countersunk alignment detail as claimed by the applicant since the applicant has effectively admitted the equivalence of the lip-alignment detail and the chamfered portion-countersunk alignment detail for their use in

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the container closure art; and that the selection of any of these known equivalents to close the container would be within the level of ordinary skill in the art. This admission is based upon the lack of challenge to the Official Notice taken by the examiner.

9. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Connolly (US 3,726,632).

Regarding claim 16, Brown discloses a container (Figure 1) that is capable of storing elongated articles and comprises a hollow base (A, B) having a bottom (A) and a side portion (B); a lid (C) having a top surface and a bottom surface (as shown, Figure 4), each dimensioned to rest upon the side portion (B); and the bottom surface of lid (C) having a compartment (c). The dimensions of Brown are such that it is capable of holding elongated articles in the manner claimed by the applicant. Brown is bottle-shaped, but does not expressly disclose candles. However, Brown does suggest that the container be used for articles other than cigars (Col. 1, 4th paragraph).

Connolly discloses that it was desirable to place candles into the neck of an attractive bottle (Col. 1, lines 6-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide elongated candles in the container of Brown as suggested by Connolly in order to provide an attractive holder for the candle.

As to claim 17, the applicant has defined tea light candles but not tea candles. The examiner asserts that the candles of Connolly are capable of functioning as tea candles and as such, the kit of Brown-Connolly discloses the claimed invention.

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steffes in view of Hammen et al (US 5,816,432).

Steffes, as applied to claim 14 above, discloses the claimed invention except for the cylindrical inner space.

Hammen et al discloses cylindrical inner space (12) for retaining beverage containers. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Steffes with a cylindrical inner space as taught by Hammen et al in order to retain beverage containers. The modification of Steffes with the teachings of Hammen et al would not affect the ability of the container to displaying candles.

Response to Arguments

11. Applicant's arguments filed 8 September 2003 with respect to Brown, have been fully considered but they are not persuasive. When Brown is in the storage configuration of Figure 4, the bottom surface of lid (C) comprises a compartment (c). The compartment is capable of receiving a candle. The container of Brown is shaped as a bottle and the examiner submits Connolly (US 3,726,632) as evidence of the ability of a bottle opening to receive a candle.

12. Applicant's arguments, see pages 10 and 11, filed 8 September 2003, with respect to the rejection(s) of claim(s) 1, 2, 4, 6, 8-10, 15, and 16 under 35 USC 102(b)

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over Schultz have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Steffes, previously provided to applicant.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
10 May 2005


Mickey Yu
Supervisory Patent Examiner
Group 3700